

BARAFF, KOERNER, OLENDER & HOCHBERG, P. C.

ATTORNEYS AT LAW
5335 WISCONSIN AVENUE, N. W., SUITE 300
WASHINGTON, D. C. 20015-2003
(202) 686-3200

B. JAY BARAFF
ROBERT L. OLENDER
JAMES A. KOERNER
PHILIP R. HOCHBERG
MARK J. PALCHICK
JAMES E. MEYERS
SUSAN R. ATHARI*
THOMAS B. MAGEE
*ADMITTED IN VA ONLY

OF COUNSEL
ROBERT BENNETT LUBIC

FAX: (202) 686-8282

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September 30, 1994

VIA HAND DELIVERY:

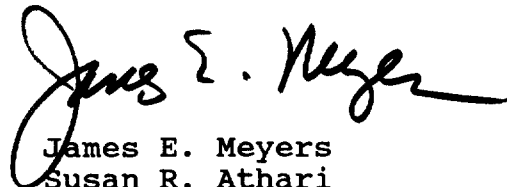
Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

**Re: Pegasus Communications, Inc.
Request for Leave to Respond and
Response to Reply of Puerto Rico
Telephone Company
GEN Docket No. 90-314**

Dear Mr. Caton:

Enclosed, on behalf of Pegasus Communications, Inc., please find an original and four copies of its Request for Leave to Respond and Response as above-referenced. Should you have any questions, please contact the undersigned.

Sincerely,



James E. Meyers
Susan R. Athari
Counsel for
Pegasus Communications, Inc.

Enclosure

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Before the
Federal Communications Commission
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of the Commission's)	GEN Docket No. 90-314
Rules to Establish New)	RM-7140, RM-7175
Personal Communications)	RM-7168
Services)	

TO: The Commission

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**REQUEST FOR LEAVE TO RESPOND TO
REPLY OF PUERTO RICO TELEPHONE COMPANY**

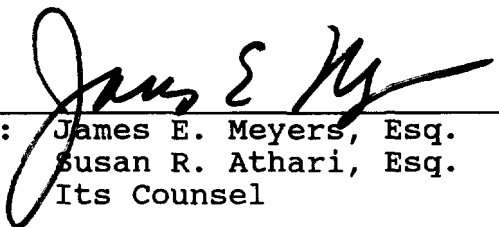
Pegasus Communications, Inc. (hereinafter "Pegasus"), by its attorneys, requests leave to file its response to the Reply of Puerto Rico Telephone Company (hereinafter "PRTC") in order to rebut assertions of a factual nature introduced by PRTC in its Reply to Opposition to Petition for Reconsideration^{1/} which occurred at the end of the pleading cycle. In its Opposition, Pegasus reserved the right to rebut any subsequent factual assertions as might be made by PRTC. See Pegasus' Opposition, n. 3. In addition, Pegasus

¹On July 25, 1994, PRTC filed a petition for reconsideration of the Commission's Memorandum Opinion and Order, FCC 94-144 (released June 13, 1994). Petition for Reconsideration, GEN. Dkt. 90-314 (filed July 25, 1994). Pegasus opposed the Petition. Opposition to Petition for Reconsideration, GEN. Dkt. 90-314 (filed August 30, 1994) (hereinafter "Opposition"). PRTC replied to Pegasus' Opposition. Reply to Opposition to Petition for Reconsideration, GEN Dkt. 90-314 (filed September 14, 1994).

seeks leave to file its response to correct questionable portrayals by PRTC of the Commission's regulations and Pegasus' submissions. Good cause accordingly exists to provide Pegasus leave to file its response and its request should be granted.

Respectfully submitted,

PEGASUS COMMUNICATIONS, INC.


By: James E. Meyers, Esq.
Susan R. Athari, Esq.
Its Counsel

BARAFF, KOERNER, OLENDER & HOCHBERG, P.C.
5335 Wisconsin Avenue, N.W.
Suite 300
Washington, D.C. 20015
(202) 686-3200

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	GEN Docket No. 90-314
Amendment of the Commission's)	RM-7140, RM-7175
Rules to Establish New)	RM-7168
Personal Communications)	
Services)	

TO: The Commission

RESPONSE TO REPLY OF PUERTO RICO TELEPHONE COMPANY

Pegasus Communications, Inc. (hereinafter "Pegasus"), by its attorneys, seeks to rebut assertions of a factual nature introduced by Puerto Rico Telephone Company (hereinafter "PRTC") in its Reply to Opposition to Petition for Reconsideration^{1/} (hereinafter "Reply") and to correct questionable portrayals by PRTC of the Commission's regulations and Pegasus' submissions.

In its Reply, PRTC tries to justify the grounds for filing its Petition for Reconsideration on Sections 1.429(a) and 1.429(i) of the Commission's rules, and attempts to

^{1/} On July 25, 1994, PRTC filed a petition for reconsideration of the Commission's Memorandum Opinion and Order, FCC 94-144 (released June 13, 1994) (hereinafter MO&O). Petition for Reconsideration, GEN. Dkt. 90-314 (filed July 25, 1994) (hereinafter "Petition" or "Petition for Reconsideration"). Pegasus opposed the Petition. Opposition to Petition for Reconsideration, GEN. Dkt. 90-314 (filed August 30, 1994) (hereinafter "Opposition"). PRTC replied to Pegasus' Opposition. Reply to Opposition to Petition for Reconsideration, GEN Dkt. 90-314 (filed September 14, 1994) (hereinafter "Reply").

refute Pegasus' arguments by stating that, based on Section 1.429 of the Commission's rules, PRTC is not required to make any showing as to why it did not participate earlier in the proceeding^{2/}, that no supporting materials must be submitted, and that consideration of its facts are in the public interest. See PRTC Reply at 3-5.

PRTC, however, obfuscates Pegasus' argument by asserting phony grounds to make its point. First, in its Opposition, Pegasus merely identified several of the opportunities PRTC had earlier in the proceeding to present the facts upon which it relies. Pegasus did not contend that PRTC had to show why it did not participate earlier in the proceedings. Such a showing is a requirement of Section 1.106 and is inapplicable in notice and comment proceedings, which Pegasus clearly pointed out to PRTC in its Opposition.^{3/} See Pegasus' Opposition at 1, n.1. As Pegasus asserted in its Opposition, Section 1.429(A)-(C) is applicable to the instant case, particularly since PRTC has introduced facts not previously presented to the Commission.

^{2/} As additional support to its argument, PRTC cites to FM Channel Assignments, 49 RR 2d 703, 705 at n.5, which states that, in a notice and comment proceeding, Section 1.429 "contains no requirement that parties not participating in earlier stages of the proceeding make a showing as to why they did not participate." Id.; See PRTC Reply at 3.

^{3/} Section 1.106(b)(1) requires that any person not a party to the proceeding who files a petition for reconsideration must state with particularity why its interests are adversely affected and must make a showing why he could not participate earlier in the proceeding.

See Pegasus' Opposition at 2-5. PRTC is relying on the strawman of the Section 1.106 party participation requirement to make its argument because it has failed to adequately meet the requirements of Section 1.429(b). PRTC has failed to make any of the showings required in Section 1.429(b)(1)-(3) as to why it is relying on facts which have not previously been presented to the Commission.^{4/} Pegasus pointed out (1) that PRTC's petition relies on the "facts" that previously have not been presented to the Commission and (2) that PRTC failed to make the required showings as to why it relied on such facts.

In its Reply, PRTC does not refute that it relied on such facts or that it did not meet the required Section 1.429(b) showing. Instead, PRTC lurched down the path of mischaracterizing Section 1.429 and Pegasus' arguments. PRTC asserted that no supporting materials, such as affidavits, declarations and the like are required to be submitted, information which Pegasus never said was required under Section 1.429.^{5/}

^{4/} The circumstances in which a petition for reconsideration relying on new facts will be granted under Section 1.429(b)(1)-(3) are: (1) the facts relied on are based on events which have occurred or circumstances which have changed since the last opportunity to present such facts; (2) the facts were unknown to the petitioner and could not through ordinary diligence have discovered them; (3) the Commission determines that consideration of such facts are in the public interest.

^{5/} Pegasus does not claim that verified documentation must be submitted by PRTC pursuant to Commission's rules. Pegasus merely pointed out in its Opposition that PRTC's petition

PRTC seeks salvation under Section 1.429(b)(3) of the Rules. Yet it fails to present sensible public interest grounds to justify to the Commission a grant of reconsideration. Indeed, the authority identified by PRTC for its public interest justification ironically warrants the very denial of PRTC's Petition for failing to make the requisite Section 1.429(b) showing.^{6/}

In its zeal, PRTC has ridden roughshod over some of Pegasus' assertions. First, PRTC claims that the new BTA was "gerrymandered," because Pegasus made the observation that the new BTA would not disrupt existing cable television media distribution patterns.^{7/} See PRTC Reply at 5-6 and n.7. In fact the converse has occurred with the establishment of the new BTA. The new San Juan BTA is not only larger in geographic size to the Mayaguez/Aguadilla-Ponce BTA, it contains more than twice as many people and twice as large a potential customer base, hardly the result of PRTC's incongruent notion of "gerrymandering." The San

attached to it detailed supporting documentation to demonstrate additional support to the facts it has presented to the Commission. See also Pegasus' ex parte submission, GEN Dkt. No. 90-314 (filed April 4, 1994), providing additional support.

^{6/} See PRTC Reply at 5 citing Additional Private Radio Service, 1 FCC Rcd. 5, 6, 61 RR 2d 276, 279 (1986) (Reconsideration denied under Section 1.429).

^{7/} The Mayaguez/Aguadilla-Ponce BTA encompasses many more municipios than the Mayaguez franchise area that Pegasus serves with its cable television system. Pegasus hardly "gerrymandered" anything.

Juan BTA stands to reap a significantly higher reward in terms of double the population density. PCS investment, therefore, could be seen as more attractive in the new San Juan BTA since there are approximately twice as many potential customers available in the San Juan BTA. By the same token, the investment opportunity in the Mayaguez/Aguadilla-Ponce BTA is not unattractive. As both Pegasus and the Commission noted, the one million population for the Mayaguez/Aguadilla-Ponce BTA exceeds the population of a considerable number of BTAs established by Rand McNally for the mainland. See Pegasus Petition at 3, n.8. See also In re Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, Second Memorandum Opinion and Order, GEN. Dkt. 90-314, FCC 94-218, para. 18 (released August 25, 1994) and In re Amendment of the Commission's Rules to Establish New Personal Communications Services, Memorandum Opinion and Order, Gen. Dkt. No. 90-314, FCC 94-144, para. 79 (released June 13, 1994) (hereinafter MO&O).

PRTC likewise seeks a public interest justification for a single BTA from its notions of the "flow of commerce" on the island. In attempting to do so, it has mischaracterized the significance Pegasus has placed on the factors Rand McNally considers in establishing BTAs. The information presented by PRTC such as banking, universities, newspapers, shipping, etc. only confirms that considerable business

originates from the San Juan area and that San Juan is a major commercial center, a fact which Pegasus does not dispute. Pegasus has merely pointed out that such factors are not relevant to refute whether the Mayaguez/Aguadilla-Ponce area should be a separate BTA, since Mayaguez/Aguadilla and Ponce are commercial centers in their own right with significant shipping ports, airports, a university, banks, and media, as Pegasus demonstrated in its Petition for Reconsideration, its ex parte presentation, and, most recently, in its Opposition. See Pegasus' Petition at 3-4; See also Pegasus' ex parte submission at 1-2 and Pegasus' Opposition at 9-10. As such, while such factors do indicate that the San Juan area is a major commercial center justifying its own BTA, such information does not require that only one BTA is necessary or even desirable for Puerto Rico.

Finally, PRTC contends that Pegasus' factual assertions are insupportable by Pegasus' own submissions because some of the promotional materials laud the extent of the Puerto Rico infrastructure. See PRTC Reply at 7. Pegasus has not contended that there is no infrastructure in Puerto Rico, but rather has indicated that there are significant impediments present in the infrastructure (e.g., extremely time-consuming to reach San Juan from the south and west; highway from San Juan to Aguadilla along northern coast remains under construction) that contribute to the existence

of Mayaguez/Aguadilla and Ponce as an economic center of their own, per the definition set forth by Rand McNally.

The two BTAs for Puerto Rico established by the Commission further the public interest in compelling contrast to the pettifogging notions advanced by PRTC. PRTC ignores, as it must, the public interest benefits the new BTA structure will bring to Puerto Rico. (See e.g., Pegasus' Petition for Reconsideration (filed on December 8, 1993) at 6-7; See also, e.g., Pegasus' Opposition at 12).

Indeed, the Commission's revised PCS construction requirements established in the MO&O^{8/} enhance the significant public interest benefits derived from the two BTAs. The Mayaguez/Aguadilla-Ponce BTA ensures that PCS will be available there to at least two thirds of the BTA's approximately one million inhabitants. Under PRTC's notion of the public interest, however, the residents of the Mayaguez/Aguadilla-Ponce BTA effectively can be passed over by PCS licensees meeting their construction requirements on a population basis solely by serving San Juan and environs.

The two BTAs established by the Commission clearly further the overarching purpose of the Communications Act to ensure as far as possible the rapid availability of communications services and adequate facilities for all.^{9/}

^{8/} MO&O, para. 155.


^{9/} 47 U.S.C. § 151.

WHEREFORE, the Petition for Reconsideration filed by
Puerto Rico Telephone Company should be denied.

Respectfully submitted,

PEGASUS COMMUNICATIONS, INC.

By:


James E. Meyers
Susan R. Athari
Its Counsel

BARAFF, KOERNER, OLENDER & HOCHBERG, P.C.
5335 Wisconsin Avenue, N.W.
Suite 300
Washington, D.C. 20015
(202) 686-3200

CERTIFICATE OF SERVICE

I, Pamela Kidwell, certify that I have this 30th day of September, 1994, served by regular United States mail, first class postage prepaid, a copy of the foregoing "Request for Leave to Respond to Reply of Puerto Rico Telephone Company" and its companion "Response to Reply of Puerto Rico Telephone Company" to:

David A. Irwin
Jeffrey L. Timmons
Irwin, Campbell & Crowe, P.C.
1320 18th Street, N.W.
Suite 400
Washington, D.C. 20036

Pamela Kidwell
Pamela Kidwell